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ESG, What Can This Be? A Conversation With Bracewell's Rachel Goldman

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On this episode of The Bracewell Sidebar, we discuss all things ESG with ***Rachel Goldman***, co-chair of Bracewell's ***ESG practice***. They discuss what ESG entails, its popularization and much more.

Rachel is an accomplished litigator with more than 20 years of experience, including as in-house counsel. She began her career as an assistant corporate counsel in the New York City Law Department, Office of the Corporation Counsel.

How do you define ESG?

ESG can mean a lot of different things, and it means different things to different people depending on whom you ask. Probably the best general definition of ESG — in addition to the words environmental, social and governance — is a combination of a variety of factors that companies are or should be taking into account when making strategic business, investment and operational decisions. It's informing not only the decisions companies are making about current operations and future planning, but also informing investors, regulators, shareholders, the public customers and consumers of their products. It really does run the gamut of who's interested and why they're interested. But at bottom, it really is just taking a look at the decisions that companies are making and how they're making them for now and for the future.

Environmental is probably fairly easy to figure out, but what are some other areas that ESG covers?

I think that's right. Environmental is probably the easiest to figure out. Just starting there, the simplest way to explain that is probably the impact that a company's activities has on the environment and then taking into account climate change, and what's happening in the environment and what companies are doing to prepare for climate change.

The social is a little bit more fluid. One way to think about it is human capital — the employees of a company, the leaders of the company, the labor and workforce of the company. Another aspect of social would be human rights, health and safety.

Why is it important for companies to start doing good now? Why is this something that didn't happen a long time ago?

There are some theories out there about why now. One of them is because of the experience with the pandemic. This global crisis reminded us all of how connected we are and how vulnerable our global economy is something that has weighed on the minds of everyone. It affected everybody. Health and safety were paramount considerations, and the impact on all of our lives was unprecedented at least in our modern memory. At the same time, there was an increased call for social justice, equality and diversity that we haven't seen in years. Plus, add to that the extreme weather events of the last few years around the country and around the world of hurricanes, fires, droughts, flooding in the polar vortex. Putting all of those factors together forced everyone to start looking at a way to avoid future global crises. Across the globe, if they're not moving toward sustainability, they will be left behind. So, there is a combination of doing good, and doing what they need to financially to survive and thrive in the future.

Take a hypothetical company that more or less thinks of itself as doing things the right way, but probably has some room for improvement but hasn't really looked inward yet to reflect on its ESG approach. What things can they do from a practical standpoint?

Look at the core mission and goals of the company, its principles, its industry, its customers and its shareholders, and define for itself where it wants to be on the ESG spectrum and how it impacts its business. That would be the starting place. Then come up with those policies and mission statement, and secure buy in from the board and from leadership.

What's the risk resulting from mishandling ESG concerns?

You can make a material misstatement or false or misleading disclosure, and that can come in various ways. It can come specifically with the operations of the company. It can also come with later false or misleading inaccurate disclosures. For instance, if there were a crisis or there were a situation in which a CEO had to step down for some reason or there was a lawsuit over sexual harassment at a company, and the disclosures that the company made regarding those crises were not accurate or were misleading, that would end up not only potentially with enforcement by the SEC, but definitely securities litigation from shareholders bringing stock drop lawsuits and alleging that the disclosures of the announcements were false. It's important to know it doesn't just have to be the formal disclosures that are made in SEC statements. Marketing statements and public statements can also be used against companies for making misleading statements that are material.

What can we do with our manufacturing process?

It comes back to knowing the company, knowing what its mission and principles are, where its business model is, and at every level, considering the ESG factors. It really does put the onus on companies to sort of look from the bottom to the top as to how they are impacting their environment, both social and physical.

I think it's impossible for a company to make all the right decisions at all the right times, especially from the beginning, but it's a process to put those aspirations into play in the same way that the concept in compliance of internal controls starts at the top and goes all the way through the company. You need to make sure that employees from top to bottom are thinking about these issues and are empowered to speak up about them, to share thoughts and insights so that the management can hear what's really going on.

Want to learn more about ESG and Bracewell's experience in this space? Email [***Rachel Goldman***]() or [***Matthew Nielson***]().

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